

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2009-360-C, ORDER NO. 2010-_____

MARCH _____, 2010

IN RE:)	
)	
)	ORDER GRANTING
Application of Image Access, Inc. d/b/a NewPhone)	DESIGNATION AS AN ELIGIBLE
for Certification as an Eligible Telecommunications)	TELECOMMUNICATIONS
Carrier)	CARRIER for LIFELINE AND
		LINK-UP SUPPORT FROM THE
		UNIVERSAL SERVICE FUND

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Image Access, Inc. d/b/a NewPhone ("NewPhone" or the "Company") for designation as an eligible telecommunications carrier ("ETC") throughout the BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina service territories ("Designated Service Territory") under the provisions of 47 U.S.C. §214(e)(2) of the Federal Telecommunications Act (the "Federal Act") and 47 C.F.R. §§54.401-54.417 (the "FCC's Rules"), as well as Commission Regulation R. 103-690 governing ETC designation. NewPhone filed its Application on August 24, 2009, seeking ETC status in order to offer Lifeline and Link-Up support to its qualifying customers, and draw from the federal Universal Service Fund ("USF") in connection with those services.

By letter, the Commission instructed NewPhone to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the

Application. The purpose of the Notices of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. The Company complied with this instruction and provided the Commission with proofs of publication of the Notice of Filing. No petitions to intervene were received. The South Carolina Office of Regulatory Staff (“ORS”) was a party pursuant to statute.

The public hearing was held on March 4, 2010 at 10:30 a.m., with the Honorable Elizabeth B. Fleming, Chairman, presiding. At the hearing, John J. Pringle, Jr., Esquire represented NewPhone. Lessie Hammonds, Esquire represented the ORS. NewPhone presented the Direct Testimony and Rebuttal Testimony of Jim Dry. The ORS presented the Direct Testimony of James McDaniel.

BACKGROUND

NewPhone is a competitive local exchange carrier (“CLEC”) and interexchange carrier (“IXC”) headquartered in Metairie, Louisiana, and was authorized to provide CLEC services in South Carolina on October 26, 1999 via Order No. 1999-762 issued in Docket No. 1999-269-C. NewPhone was authorized to provide IXC services on November 12, 2004 via Order No. 2004-564 issued in Docket No. 2004-205-C. The Company provides local exchange and exchange access services in the Designated Service Area using a combination of resale and unbundled network elements (UNEs), or unbundled network equivalents obtained through commercial agreements.. NewPhone offers all of the supported services using facilities obtained as UNEs, (or equivalents thereof through commercial agreements), and resale agreements. According to FCC

Rules, facilities obtained as UNEs satisfy the requirement that an ETC provide the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services.

The federal USF consists of four programs, each administered by the Universal Service Administrative Company ("USAC"): 1) financial support to carriers serving high-cost areas; 2) the E-rate program, which provides discounted services (local and long distance telephone service, Internet access, and internal connections to eligible schools and libraries; 3) assistance to low income customers (discounted installation and monthly telephone services); and 4) discounted services to rural health care providers. NewPhone has made clear that it is not planning to seek high-cost universal service funding if it is designated as an ETC in South Carolina. Accordingly, NewPhone limits its requested USF support to the federal USF low income support program, and certifies that all low income USF funding it receives will be used to reduce the tariffed residential rate for its Lifeline and Link-Up customers, consistent with 47 C.F.R. § 54.403.

On February 26, 2010, NewPhone and the ORS submitted a Stipulation setting out a number of terms under which NewPhone agreed to operate should the Commission grant its ETC Application. The Stipulation between NewPhone and the ORS is attached hereto as Exhibit A and incorporated herein by reference.

ANALYSIS

A. Federal Statutory Requirements

In Section 214(e)(2) of the Federal Act, Congress authorized state commissions, consistent with the public interest, convenience, and necessity to designate a common carrier as an ETC if the carrier meets the requirements of Section 214(e)(1). Section 214(e)(1) provides:

(1) Eligible Telecommunications Carriers

A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received:

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefore using media of general distribution.

A telecommunications carrier may be designated as an ETC , and receive universal service support, so long as it offers, within a service area, the services that are supported by federal universal service support mechanisms under Section 254 (c) of the Federal Act, and so long as it adequately advertises the availability of, and the charges for, such

services. The Commission notes that NewPhone, bears the burden of proving that it has met each of the necessary elements required for ETC designation.

1. Service Area

Section 54.207 of the FCC's rules defines a "service area" as a "geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms." 47 C.F.R. § 54.207(a). For service areas served by a non-rural incumbent local exchange company ("ILEC"), there are no restrictions on how a Commission identifies a "service area" for purposes of designating a competitive ETC. NewPhone has requested ETC designation in wire centers located throughout the service area of BellSouth/AT&T-South Carolina, a non-rural carrier. No party opposes NewPhone's service area designation. The Commission finds that NewPhone has met the service area requirement.

2. Required Service Offerings

The services to be supported by the USF under Section 254(a) are principally enumerated in Section 54.101(a) of the FCC's Rules, 47 CFR 54.101(a), as follows:

- (a) Voice grade access to the public switched network;
- (b) Local usage;
- (c) Dual tone multi-frequency signaling or its functional equivalent;
- (d) Single-party service or its functional equivalent;
- (e) Access to emergency services;
- (f) Access to operator services;
- (g) Access to interexchange service;
- (h) Access to directory assistance; and

- (i) Toll limitation for qualifying low-income consumers.

As set out in its Application and Testimony, NewPhone will offer all of the services enumerated above using a combination of resale and facilities obtained from BellSouth/AT&T-South Carolina by means of a commercial agreement. Accordingly, NewPhone satisfies the requirement set out in Section 214(e)(1)(A).

Additionally, FCC rules obligate an ETC to provide the low income support programs known as Lifeline and Link -Up and advertise the availability of those services in a manner reasonably designed to reach those likely to qualify for them. 47 C.F.R. §§ 54.405 and 54.411. No party provided evidence or argument in opposition to NewPhone's evidence regarding the foregoing supported services. Accordingly, the Commission finds that NewPhone offers and has the capability to provide each of the nine supported services in the areas for which it seeks ETC status.

3.) Required Advertising

In addition to the foregoing service offerings required by Section 214(e)(1)(A) of the Federal Act, FCC rules (CFR Parts 54.405 and 54.411) provide that an ETC must also publicize the availability of Lifeline and Link-Up services "in a manner reasonably designed to reach those likely to qualify for the service." Lifeline and Link-Up are the programs NewPhone intends to support with ETC funding. NewPhone provided evidence showing that it will advertise the availability and terms of its services throughout its designated area (Dry Direct Testimony, pages 7-8). No party challenged NewPhone's evidence. The Commission concludes that NewPhone has demonstrated that it will publicize the availability of Lifeline and Link-up in a manner reasonably designed to reach

those likely to qualify for the service, as directed by CFR §54.405 and 54.411.

B. The FCC's ETC Order

On March 17, 2005, the FCC issued its ETC Order, to clarify existing requirements and impose additional federal requirements that the FCC will use in evaluating future federal applications for ETC designation. The FCC described its additional guidelines, codified at 47 CFR §54.202, as "the minimum requirements" it would use in designating a carrier as an ETC, and urged that state commissions apply these guidelines in their evaluation of ETC applications properly before such commissions. However, the FCC did not obligate state commissions to employ the additional guidelines. ETC Order at paragraphs 58-64.

Generally speaking, the additional FCC guidelines require that an ETC applicant demonstrate: (1) a commitment and ability to provide services, including service to all customers within its proposed service area; (2) that it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the ILEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Federal Act. Further, the FCC augmented its existing annual certification and reporting requirements, to further the FCC's goal of ensuring that ETCs provide supported services throughout their service territories. Moreover, the FCC expanded its view of the public interest requirement for additional ETCs. Although the additional requirements in the ETC Order are not binding on the Commission, we will consider them, as is appropriate, in this proceeding.

Moreover, NewPhone will abide by the Commission regulations regarding designation of an eligible telecommunications carrier which became effective on May 23, 2008, and the Commission regulations regarding annual reporting requirements which became effective June 26, 2009. NewPhone will also abide by all Commission regulations applicable to its South Carolina operations.

1. Specific Additional FCC Performance Requirements

First, pursuant to the ETC Order (and Commission regulations), an ETC applicant shall commit to providing service throughout its proposed designated service area to all customers making a reasonable request for service. 47 CFR §54.202(a)(1)(A).

NewPhone commits to providing service throughout its proposed ETC-designated service area to all customers. (Dry Direct Testimony, page 10). No party questions that commitment. Consequently, the Commission concludes that NewPhone supplied sufficient evidence demonstrating its present ability to provide service throughout its proposed ETC-designated service area to all customers who make a reasonable request for service.

The FCC also expects an applicant to demonstrate its ability to furnish services to all customers in the foreseeable future. Thus, an ETC applicant shall submit to the FCC a five-year plan describing, with specificity, proposed improvements or upgrades to the applicant's network on a wire-center-by-wire-center basis throughout its proposed designated service area. Consistent with Commission Regulation 103-690, and because NewPhone seeks ETC designation solely for reimbursement of subsidized Lifeline and

Link-Up services to eligible customers, the Commission agrees with NewPhone and the ORS and finds that submission of a Two-Year Network Improvement Plan is not required at this time. However, should NewPhone seek to receive high cost support, it shall abide by the multiyear network improvement plan requirement.

Second, the ETC Order and Commission Regulation 103-690. obligate an applicant to demonstrate its ability to remain functional in emergency situations. NewPhone demonstrated its willingness and ability to do so. Because NewPhone leases facilities from BellSouth/AT&T-South Carolina to serve its customers, it has the same ability to remain functional in emergency situations as its underlying carrier. No party disagrees. The Commission finds that NewPhone has met its burden on this issue.

Third, an ETC Applicant shall demonstrate that it will satisfy applicable consumer protection and service quality standards. 47 CFR §54.202(a)(3). NewPhone provided evidence that it will satisfy applicable consumer protection and service quality standards. As part of its certification requirements for local exchange and interexchange services, NewPhone must abide by the service quality and consumer protection rules set forth in the Commission's regulations and applicable orders. NewPhone provided all necessary commitments concerning any applicable standards.

The Commission concludes that NewPhone has demonstrated that it will satisfy appropriate consumer protection and service quality standards. This finding is conditioned on NewPhone's continuing compliance with the commitments it made in its certification docket and in this proceeding.

Fourth, an ETC Applicant shall demonstrate that it offers a local usage plan comparable to the one offered by the ILEC in the service areas for which it seeks designation. The FCC has not adopted a specific local usage threshold. NewPhone's witness indicates that all of the Company's service offerings include unlimited local calling. Therefore, the Commission finds that NewPhone's local usage and rate plans meet the comparable local usage and rate plan requirement.

Fifth, an ETC Applicant shall certify its acknowledgement that the FCC may require it to provide equal access to long distance carriers if no other ETC is doing so within the service area. ETC Order at Paragraph 35; 47 CFR §54.202(a)(5) and Commission Regulation 103-690 C. (a)(1)(C)(5) The Commission finds that NewPhone meets the equal access requirement.

2. Specific Additional FCC Certification and Reporting Requirement. [In Paragraph 69 of its ETC Order, the FCC identified the following additional annual reporting and certification requirements for ETCs (some of which simply require annual certification of existing ETC performance requirements):

a) progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets, an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled. The information should be submitted at the wire center level;

b) detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the Outage Reporting Order). An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a

communications provider's network. Specifically, the ETC's annual report must include: 1) the date and time of onset of the outage; 2) a brief description of the outage and its resolution; 3) the particular services affected; 4) the geographic areas affected by the outage; 5) steps taken to prevent a similar situation in the future; and 6) the number of customers affected;

c) the number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers;

d) the number of complaints per 1,000 handsets or lines;

e) certification that the ETC is complying with applicable service quality standards and consumer protection rules, e.g., the CTIA Consumer Code for Wireless Service;

f) certification that the ETC is able to function in emergency situations;

g) the amount of USF funding received by NewPhone during the reporting period;

h) certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and

i) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

The FCC encouraged state commissions to adopt the foregoing reporting requirements and to apply them to all ETCs, not merely competitive ETCs. ETC Order, Paragraph 71. We will follow the FCC's recommendation, and we find that NewPhone has committed to complying with all of the applicable annual reporting requirements imposed on a recipient of low-income support. The Commission concludes that NewPhone must file reports with the ORS as set out in the parties' Stipulation.

3.) The Public Interest Requirement

In the instant case, NewPhone has demonstrated that its application for ETC designation is in the public interest, within the meaning of the ETC Order. NewPhone

asserts that since low income support and Lifeline is designed to reduce the monthly rate of residential telecommunications services for eligible consumers, and is distributed on a household basis, it is assured that all support received by the carrier is used to provide Lifeline services to consumers, thus promoting Lifeline and the availability of telephone service to low income users.

In the Commission's view, the designation of NewPhone as an ETC will increase customer choice for low income consumers eligible for Lifeline and Link-Up support in the areas requested. Customers who can obtain this telecommunications service will likely benefit from additional rate plan options and increased access to emergency services.

The Commission notes that NewPhone's specific voluntary commitment to comply with the guidelines in the ETC order - and specifically with the ORS' tailoring of those guidelines to fit both the Commission's existing rules and Orders and the particular circumstances of NewPhone's Application - is a critical component supporting a positive public interest finding. Thus, subject to the commitments and conditions discussed in this Order, the Commission concludes that NewPhone has shown that its designation as an additional ETC is in the public interest for its proposed ETC designated area.

C. Other Considerations

With regard to annual recertification, we hold that the annual recertification required by the FCC and the Universal Service Administrative Company (USAC) is adequate and that the Company should not be required to apply for additional recertification to *this* Commission on an annual basis because the NewPhone does not

seek federal high cost support. However, since NewPhone seeks to be designated only in non-rural exchanges of BellSouth/AT&T-South Carolina, expansion to rural high cost areas would require additional designation proceedings before this Commission. If NewPhone seeks high cost support, the company shall fully comply with the Commission regulations for ETC designation. Additionally, NewPhone shall include in its quarterly Service Quality Report the number and justification of applications held for more than 30 days and the number and justification of applications that were denied. NewPhone shall submit a progress report on its two-year plan that describes the carrier's plans for advertising and outreach programs for identifying, qualifying, and enrolling eligible participants in the Lifeline and Link-Up programs. In general, NewPhone shall comply with the filing requirements set out in Commission Regulation 103-690.1, and those set out in its Stipulation with the ORS.

IT IS, THEREFORE, ORDERED THAT:

1. NewPhone is designated as an ETC, as of the effective date of this order, in the requested areas served by BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina.
2. NewPhone shall abide by its commitment to provide service throughout its ETC-designated service area to all customers making a reasonable request for service, including low-income customers.
3. NewPhone shall include in its quarterly Service Quality Report the number and justification of applications held for more than 30 days and the number and justification of applications that were denied.

4. NewPhone shall submit a progress report on its two-year plan that describes the carrier's plans for advertising and outreach programs for identifying, qualifying, and enrolling eligible participants in the Lifeline and Link-Up programs.

5. All federal USF funding received as a result of this Order will be used to Lifeline and Link-Up support and will be flowed through to the direct benefit of eligible low income customers.

6. Should the Commission determine that NewPhone has not honored its commitments and plans as set forth before the Commission, or has failed to follow the applicable statutes, rules or regulations, the Commission may deny NewPhone's annual recertification as an ETC.

7. The NewPhone-ORS Stipulation is approved.

8. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Honorable Elizabeth B. Fleming, Chairman

ATTEST:

John E. Howard, Vice Chairman

(SEAL)